Adriana's Insurance Services, Inc.; Just Auto Insurance Services, Inc.; Veronica's Auto Insurance Services, Inc. *and* Aldo Alpizar *and* Liset Viamontes. Cases 31–CA–113416, 31–CA–113417, 31–CA–113420, 31–CA–113423, 31–CA–113425, and 31–CA–113428

May 31, 2016

DECISION AND ORDER

BY MEMBERS MISCIMARRA, HIROZAWA, AND MCFERRAN

On April 7, 2015, Administrative Law Judge Mary Miller Cracraft issued the attached decision. Respondents Adriana's Insurance Services, Inc. (Adriana's) and Just Auto Insurance Services, Inc. (Just Auto) filed joint exceptions and a supporting brief, Respondent Veronica's Auto Insurance Services, Inc. (Veronica's) filed separate exceptions and a supporting brief, the General Counsel filed an answering brief, and Respondents Adriana's and Just Auto filed a joint reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The judge found, applying the Board's decision in *D. R. Horton*, 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), and *Murphy Oil USA, Inc*., 361 NLRB No. 72 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), that the Respondents violated Section 8(a)(1) of the Act by enforcing an arbitration agreement that requires employees to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial. The judge also found, relying on *D. R. Horton* and *U-Haul of California*, 347 NLRB 375, 377–378 (2006), enfd. 255 Fed. Appx. 527 (D.C. Cir. 2007), that the maintaining of the arbitration agreement by the Respondents Adriana's Insurance Services, Inc. (Adriana's) and Veronica's Auto Insurance Services, Inc. (Veronica's) violated Section 8(a)(1) because employees reasonably would believe that it bars or restricts their right to file unfair labor practice charges with the Board.

The Board has considered the decision and the record in light of the exceptions and briefs and, based on the judge's application of *D. R. Horton* and *Murphy Oil*, we affirm[1] the judge's rulings,[2] findings,[3] and conclusions[4] expired, and thus the Board had a quorum at the time it issued *D. R. Horton*. See *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014); *Mathew Enterprise, Inc. v. NLRB*, 771 F.3d 812, 814 (D.C. Cir. 2014); *Gestamp South Carolina, L.L.C. v. NLRB*, 769 F.3d 254, 257–258 (4th Cir. 2014); *Entergy Mississippi, Inc.,* 361 NLRB No. 89 (2014), affd. in part, revd. in part on other grounds 810 F.3d 287 (5th Cir. 2015).

The Respondents additionally argue that Regional Director Mori Pam Rubin was appointed at a time when the Board lacked a quorum, and therefore lacked authority to issue and prosecute the complaint. We reject this argument for the reasons stated in *Prime Healthcare Centinela, d/b/a Centinela Hospital Medical Center*, 363 NLRB No. 44, slip op. at 1 fn. 2 (2015). See also *Pallet Cos.*, 361 NLRB No. 33, slip op. at 1–2 (2014).

Finally, we reject the Respondents' argument that the Acting General Counsel was not properly "appointed." The Respondents cite the decision in *Hooks v. Kitsap Tenant Support Services*, 2013 WL 4094344 (W.D. Wash. Aug. 13, 2013), as supporting a finding that the Acting General Counsel was not properly "appointed" under the Federal Vacancies Reform Act and therefore lacked authority to delegate his responsibilities to Regional Director Rubin.

At the outset, we note that under the Federal Vacancies Reform Act (FVRA), 5 U.S.C. §§ 3345 et seq., a person is not "appointed" to serve in an acting capacity in a vacant office that otherwise would be filled by appointment by the President, by and with the advice and consent of the Senate. Rather, either the first assistant to the vacant office performs the functions and duties of the office in an acting capacity by operation of law pursuant to 5 U.S.C. § 3345(a)(1), or the President directs another person to perform the functions and duties of the vacant office in an acting capacity pursuant to 5 U.S.C. § 3345(a)(2) or (3).

On June 18, 2010, the President directed Lafe Solomon, then-Director of the NLRB's Office of Representation Appeals, to serve as Acting General Counsel pursuant to subsection (a)(3)—the senior agency employee provision. Under the strictures of that provision, Solomon was eligible to serve as Acting General Counsel at the time the President directed him to do so. See *S. W. General, Inc. v. NLRB*, 796 F.3d 67 (D.C. Cir. 2015), rehearing en banc denied, Nos. 14–1107 & 14–1121, 2016 U.S.App.LEXIS 981 (D.C. Cir. Jan. 20, 2016). Thus, Solomon properly assumed the duties of Acting General Counsel and we find no merit in the Respondents' affirmative defense that the Acting General Counsel was "improperly and unlawfully appointed."

We acknowledge that the court in *S. W. General* also held that Solomon lost his authority as Acting General Counsel on January 5, 2011, when the President nominated him to be General Counsel. While that question is still in litigation, the Respondent never raised that argument in this proceeding, and we find that it has waived the right do so.

Finally, on October 22, 2015, General Counsel Richard F. Griffin, Jr., issued a Notice of Ratification which states, in relevant part,

> I was confirmed as General Counsel on November 4, 2013. After appropriate review and consultation with my staff, I have decided that the issuance of the complaint in this case and its continued prosecution are a proper exercise of the General Counsel's broad and unreviewable discretion under section 3(d) of the Act.
>
> My action does not reflect an agreement with the appellate court ruling in *S.W. General*. Rather, my ratification authorizes the continued prosecution of this matter and facilitates the timely resolution of the charges that I have found meritorious. Congress expressly exempted "the General Counsel of the National Labor Relations Board" from the FVRA provisions that would otherwise preclude the ratification of certain actions of other persons found to have served in violation of the FVRA. [Citation omitted.]
>
> For the foregoing reasons, I hereby ratify the issuance and continued prosecution of the complaint.

[1] The Respondents assert that the *D. R. Horton* decision is invalid because it was issued by a panel that included Member Becker. The appointment of Member Becker was constitutionally valid and had not

and adopt the recommended Order as modified and set forth in full below.[5]

Even if the Respondent had not previously waived its right to challenge the continued authority of the Acting General Counsel following his nomination by the President, this ratification by the General Counsel would render moot any argument that the *S. W. General* holding concerning the former Acting General Counsel's authority precludes further litigation in this matter.

The Respondents filed a response to the Notice of Ratification on December 4, 2015, arguing that General Counsel Griffin lacks the authority to ratify the actions taken by former Acting General Counsel Solomon because those actions were void under *S. W. General*. We reject this argument. The Respondent has misstated the holding of *S. W. General*. In that case the court recognized that the General Counsel of the National Labor Relations Board is one of several officers expressly exempted from the "void-ab-initio" and "no ratification" provisions of the FVRA. 796 F.3d at 78–79, citing 5 U.S.C. § 3348(e)(1). Therefore, the court treated the actions of an improperly serving Acting General Counsel as "*voidable*, not void," and indicated that any statutory defect in actions could be cured through ratification by a subsequent, properly appointed General Counsel. Id. (discussing 5 U.S.C. § 3348); see also *Doolin Sec. Sav. Bank, F.S.B. v. Office of Thrift Supervision*, 139 F.3d 203 (D.C.Cir.1998); *Federal Election Commission v. Legi–Tech, Inc.*, 75 F.3d 704 (D.C. Cir. 1996). Indeed, the court held that the Board's order finding the violation in *S. W. General* "did not ratify or otherwise render harmless the FVRA defect in the ULP complaint" precisely because, given the scope of prosecutorial discretion under the Act, it could not be confident that the underlying complaint would have been issued by a different General Counsel. 796 F.3d at 80–81. Here, there is no such uncertainty: the issuance of the complaint and its continued prosecution have been expressly ratified by General Counsel Griffin.

[2] Respondents Adriana's and Veronica's argue that the judge erred in excluding from evidence a new arbitration agreement they assertedly have adopted, which they claim clearly permits filing charges with the Board. The mere adoption of a new rule, without more, does not serve as a defense to an unfair labor practice finding. See *New Passages Behavioral Health & Rehab*, 362 NLRB No. 55, slip op. at 1–2 (2015); *Passavant Memorial Area Hospital*, 237 NLRB 138, 138–139 (1978). Accordingly, the judge's evidentiary ruling was not an abuse of discretion. The Respondents may introduce any new agreement at the compliance stage of these proceedings to show they have rescinded the unlawful agreement.

[3] The Respondents argue that the complaint is time barred by Sec. 10 (b) because the initial unfair labor practice charge was filed and served more than 6 months after the Charging Parties signed and became subject to the Agreement for Binding Arbitration. We reject this argument because the Respondents continued to maintain the unlawful agreement during the 6-month period preceding the filing of the initial charge. The Board has long held under these circumstances that maintenance of an unlawful workplace rule, such as the Respondents' arbitration policy, constitutes a continuing violation that is not time barred by Sec. 10(b). See *PJ Cheese, Inc.*, 362 NLRB No. 177, slip op. at 1 (2015); *Neiman Marcus Group*, 362 NLRB No. 157, slip op. at 2 & fn. 6 (2015); and *Cellular Sales of Missouri, LLC*, 362 NLRB No. 27, slip op. at 2 & fn. 7 (2015).

The dissent asserts that "[t]he class-action waiver agreements were voluntarily signed, even though the Respondents were willing to hire employees or continue their employment only if they entered into the agreements" This assertion does not withstand scrutiny. Under established law in *Horton* and the many cases following it, the material question is whether the employees were required to sign the waiver agreements "as a condition of their employment." *D. R. Horton*, supra, 357 NLRB at 2277. By the dissent's own admission, they were. Moreover, employees who sign the agreements after being told that, if they don't sign, they can look elsewhere for a job, can hardly be said to have signed "voluntarily." In any event, the Board holds that an arbitration agreement that, as applied, precludes collective action in all forums is unlawful even if entered into voluntarily, because it requires employees to prospectively waive their Sec. 7 right to engage in concerted activity. See *Haynes Building Services*, 363 NLRB No. 125, slip op. at 3 fn. 12; *Bristol Farms*, 363 NLRB No. 45 (2015); *On Assignment Staffing Services*, 362 NLRB No. 189, slip op. at 1, 5–8 (2015). We accordingly need not pass on whether the agreements here are voluntary.

The Respondents argue that their arbitration policy includes an exemption allowing employees to file charges with a governmental agency, such as the Equal Employment Opportunity Commission, and thus does not, as in *D. R. Horton,* unlawfully prohibit them from collectively pursuing litigation of employment claims in all forums. In support of their argument, the Respondents cite *Owen v. Bristol Care, Inc.*, 702 F.3d 1050, 1053–1054 (8th Cir. 2013), in which the court stated, in dicta, that the arbitration agreement there did not bar all concerted employee activity in pursuit of employment claims because the agreement permitted employees to file charges with administrative agencies that could file suit on behalf of a class of employees. We reject the Respondents' argument for the reasons set forth in *SolarCity Corp.*, 363 NLRB No. 83 (2015).

[4] Our dissenting colleague, relying on his dissenting position in *Murphy Oil*, 361 NLRB No. 72, slip op. at 22–35 (2014), would find that the Respondents' arbitration agreement does not violate Sec. 8(a)(1). He observes that the Act does not "dictate" any particular procedures for the litigation of non-NLRA claims, and "creates no substantive right for employees to insist on class-type treatment" of such claims. This is all surely correct, as the Board has previously explained in *Murphy Oil*, above, slip op. at 2, and *Bristol Farms*, 363 NLRB No. 45, slip op. at 2 & fn. 2 (2015). But what our colleague ignores is that the Act "does create a right to *pursue* joint, class, or collective claims if and as available, without the interference of an employer-imposed restraint." *Murphy Oil*, above, slip op. at 2 (emphasis in original). The Respondents' agreement is just such an unlawful restraint.

Likewise, for the reasons explained in *Murphy Oil* and *Bristol Farms*, there is no merit to our colleague's view that finding the agreement unlawful runs afoul of employees' Sec. 7 right to "refrain from" engaging in protected concerted activity. See *Murphy Oil*, above, slip op. at 18; *Bristol Farms*, above, slip op. at 2. Nor is he correct in insisting that Sec. 9(a) of the Act requires the Board to permit individual employees to prospectively waive their Sec. 7 right to engage in concerted legal activity. See *Murphy Oil*, above, slip op. at 17–18; *Bristol Farms*, above, slip op. at 2.

Further, we reject the position of the Respondents and our dissenting colleague that the Respondents' motion to compel individual arbitration was protected by the First Amendment's Petition Clause. In *Bill Johnson's Restaurants v. NLRB*, 461 U. S. 731, 747 (1983), the Court identified two situations in which a lawsuit enjoys no such protection: where the action is beyond a State court's jurisdiction because of Federal preemption, and where "a suit . . . has an objective that is illegal under federal law." 461 U. S. at 737 fn. 5. Thus, the Board may properly restrain litigation efforts such as the Respondent's motion to compel arbitration that have the illegal objective of limiting employees' Sec. 7 rights and enforcing an unlawful contractual provision, even if the litigation was otherwise meritorious or reasonable. See *Murphy Oil*, supra, slip op. at 20–21; *Convergys Corp.*, 363 NLRB No. 51, slip op. at 2 fn. 5 (2015).

[5] We amend the judge's remedy and shall order the Respondents to reimburse Charging Parties Aldo Alpizar and Liset Viamontes and any

ORDER

A. The National Labor Relations Board orders that the Respondent, Adriana's Insurance Services, Inc., Rancho Cucamonga, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining an Arbitration Agreement and Agreement for Binding Arbitration that employees reasonably would believe bars or restricts the right to file charges with the National Labor Relations Board.

(b) Enforcing an arbitration agreement in a manner that requires employees to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful Arbitration Agreement and Agreement for Binding Arbitration in all of their forms, or revise them in all of their forms to make clear to employees that each Agreement does not bar or restrict employees' right to file charges with the National Labor Relations Board.

(b) Notify all current and former employees who signed the Agreement for Binding Arbitration or to whom the Agreement for Binding Arbitration or the Arbitration Agreement was presented that they have been rescinded or revised and, if revised, provide them a copy of the revised Agreements.

(c) Notify the Superior Court of California, County of Los Angeles, Central Civil West, in Case Number BC502472 and the California Court of Appeal, Second Appellate District, Division Three, in Case Number BC502472 that it has rescinded or revised the Agreement for Binding Arbitration and the Arbitration Agreement upon which it based its motion to compel arbitration of the claims of Aldo Alpizar and Liset Viamontes, and inform the court that it no longer opposes their lawsuit on the basis of the Agreement for Binding Arbitration and the Arbitration Agreement.

(d) In the manner set forth in this decision, reimburse Aldo Alpizar and Liset Viamontes and any other plaintiffs for any reasonable attorneys' fees and litigation expenses that they may have incurred in opposing the Respondent's motion to compel individual arbitration.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Rancho Cucamonga, California location copies of the attached notice marked "Appendix A,"[6] and at all other locations where the Arbitration Agreement and Agreement for Binding Arbitration have been maintained, copies of the attached notice marked "Appendix B."[7] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall du-

other plaintiffs for all reasonable expenses and legal fees, with interest, incurred in opposing the Respondents' unlawful motion in State court to compel individual arbitration of their class or collective claims. See *Bill Johnson's Restaurants v. NLRB*, 461 U. S. 731, 747 (1983) ("If a violation is found, the Board may order the employer to reimburse the employees whom he had wrongfully sued for their attorneys' fees and other expenses" as well as "any other proper relief that would effectuate the policies of the Act."). Interest shall be computed in the manner prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010). See *Teamsters Local 776 (Rite Aid)*, 305 NLRB 832, 835 fn. 10 (1991) ("[I]n make-whole orders for suits maintained in violation of the Act, it is appropriate and necessary to award interest on litigation expenses"), enfd. 973 F.2d 230 (3d Cir. 1992).

We shall also amend the judge's remedy to order the Respondent to notify the state superior and appellate court that it has rescinded or revised the Arbitration Agreement and Agreement for Binding Arbitration and to inform these courts that it no longer opposes the Charging Parties Aldo Alpizar and Liset Viamontes' lawsuit on the basis of the Arbitration Agreement and Agreement for Binding Arbitration.

Finally, we shall modify the judge's recommended Order to conform to our findings, the amended remedy, and to the Board's standard remedial language, and we shall substitute new notices to conform to the Order as modified.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notices reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[7] See fn. 6 above.

plicate and mail, at its own expense, a copy of the notice marked "Appendix A" to all current employees and former employees employed by the Respondent at any time since March 13, 2013, and any former employees against whom the Respondent has enforced its arbitration agreements since March 13, 2013. If the Respondent has gone out of business or closed any facilities other than the ones involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix B" to all current employees and former employees employed by the Respondent at those facilities at any time since August 23, 2011.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The National Labor Relations Board orders that the Respondent, Veronica's Auto Insurance Services, Inc., San Bernardino, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining an Arbitration Agreement and Agreement for Binding Arbitration that employees reasonably would believe bars or restricts the right to file charges with the National Labor Relations Board.

(b) Enforcing an arbitration agreement in a manner that requires employees to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful Arbitration Agreement and Agreement for Binding Arbitration in all of their forms, or revise them in all of their forms to make clear to employees that each Agreement does not bar or restrict employees' right to file charges with the National Labor Relations Board.

(b) Notify all current and former employees who signed the Agreement for Binding Arbitration or to whom the Agreement for Binding Arbitration or the Arbitration Agreement was presented that it has been rescinded or revised and, if revised, provide them a copy of the revised Agreements.

(c) Notify the Superior Court of California, County of Los Angeles, Central Civil West, in Case Number BC502472 and the California Court of Appeal, Second Appellate District, Division Three, in Case Number BC502472 that it has rescinded or revised the Agreement for Binding Arbitration and the Arbitration Agreement upon which it based its motion to compel arbitration of the claims of Aldo Alpizar and Liset Viamontes, and inform the court that it no longer opposes their lawsuit on the basis of the Agreement for Binding Arbitration and the Arbitration Agreement.

(d) In the manner set forth in this decision, reimburse Aldo Alpizar and Liset Viamontes and any other plaintiffs for any reasonable attorneys' fees and litigation expenses that they may have incurred in opposing the Respondent's motion to compel individual arbitration.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its San Bernardino, California location copies of the attached notice marked "Appendix C,"[8] and at all other locations where the Arbitration Agreement and Agreement for Binding Arbitration have been maintained, copies of the attached notice marked "Appendix D."[9] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix C" to all current employees and former employees employed by the Respondent at any time since March 13, 2013, and any former employees against whom the Respondent has enforced its arbitration agreements since March 13, 2013. If the Respondent has gone out of business or closed any facilities other than the ones involved in these proceedings, the Respondent

[8] See fn. 6 above.
[9] See fn. 6 above.

shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix D" to all current employees and former employees employed by the Respondent at those facilities at any time since August 23, 2011.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

C. The National Labor Relations Board orders that the Respondent, Just Auto Insurance Services, Inc., Ontario, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Enforcing an arbitration agreement in a manner that requires employees to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Inform the Superior Court of California, County of Los Angeles, Central Civil West, in Case Number BC502472 and the California Court of Appeal, Second Appellate District, Division Three, in Case Number BC502472 that it no longer opposes the lawsuit of Aldo Alpizar and Liset Viamontes on the basis of the Agreement for Binding Arbitration and the Arbitration Agreement upon which it based its motion to compel arbitration of the claims of Aldo Alpizar and Liset Viamontes.

(b) In the manner set forth in this decision, reimburse Aldo Alpizar and Liset Viamontes and any other plaintiffs for any reasonable attorneys' fees and litigation expenses that they may have incurred in opposing the Respondent's motion to compel individual arbitration.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its Ontario, California location copies of the attached notice marked "Appendix E."[10] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix E" to all current employees and former employees employed by the Respondent at any time since March 13, 2013, and any former employees against whom the Respondent has enforced its arbitration agreements since March 13, 2013.

(g) Within 21 days after service by the Region, file with the Regional Director for Region 31 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 31, 2016

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Kent Y. Hirozawa, Member

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Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, concurring in part and dissenting in part.

In this case, my colleagues find that the Respondents violated Section 8(a)(1) of the National Labor Relations Act (NLRA or the Act) when they enforced the Agreement for Binding Arbitration by filing a motion to compel individual arbitration of claims asserted by Charging Parties Aldo Alpizar and Liset Viamontes in a State-court class action lawsuit against the Respondents alleging wage and hour violations of the California Labor Code. The Respondents filed their motion, which the court denied, in reliance on the Agreement for Binding Arbitration, which Alpizar and Viamontes signed, and which requires that non-NLRA employment claims be

[10] See fn. 6 above.

resolved through arbitration. I respectfully dissent from this finding for the reasons explained in my partial dissenting opinion in *Murphy Oil USA, Inc.*[1] For the reasons stated below, I concur in finding that the Agreement for Binding Arbitration and a separate Arbitration Agreement (collectively, the Agreements) violated Section 8(a)(1) because they unlawfully interfere with NLRB charge filing.[2]

1. *Alleged Interference with Class Action Participation.* I agree that an employee may engage in "concerted" activities for "mutual aid or protection" in relation to a claim asserted under a statute other than the NLRA.[3] However, Section 8(a)(1) of the Act does not vest authority in the Board to dictate any particular procedures pertaining to the litigation of non-NLRA claims, nor does the Act render unlawful agreements in which employees waive class-type treatment of non-NLRA claims. To the contrary, as discussed in my partial dissenting opinion in *Murphy Oil*, NLRA Section 9(a) protects the right of every employee as an "individual" to "present" and "adjust" grievances "at any time."[4] This aspect of Section 9(a) is reinforced by Section 7 of the Act, which protects each employee's right to "refrain from" exercising the collective rights enumerated in Section 7. Thus, I believe it is clear that (i) the NLRA creates no substantive right for employees to insist on class-type treatment of non-NLRA claims;[5] (ii) a class-waiver agreement pertaining to non-NLRA claims does not infringe on any NLRA rights or obligations, which has prompted the overwhelming majority of courts to reject the Board's position regarding class-waiver agreements;[6] and (iii) enforcement of a class-action waiver as part of an arbitration agreement is also warranted by the Federal Arbitration Act (FAA).[7] Although questions may arise regarding the enforceability of particular agreements that waive class or collective litigation of non-NLRA claims, I believe these questions are exclusively within the province of the court or other tribunal that, unlike the NLRB, has jurisdiction over such claims.[8]

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[1] 361 NLRB No. 72, slip op. at 22–35 (2014) (Member Miscimarra, dissenting in part). The Board majority's holding in *Murphy Oil* invalidating class-action waiver agreements was denied enforcement by the Court of Appeals for the Fifth Circuit. *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015).

[2] I also agree with my colleagues that the Board had a quorum at the time it issued the decision in *D. R. Horton, Inc.*, 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), that the instant case is properly before the Board, and that the charges were not untimely filed and served under Sec. 10(b) of the Act.

[3] I agree that non-NLRA claims can give rise to "concerted" activities engaged in by two or more employees for the "purpose" of "mutual aid or protection," which would come within the protection of NLRA Sec. 7. See *Murphy Oil*, 361 NLRB No. 72, slip op. at 23–25 (Member Miscimarra, dissenting in part). However, the existence or absence of Sec. 7 protection does not depend on whether non-NLRA claims are pursued as a class or collective action, but on whether Sec. 7's statutory requirements are met—an issue separate and distinct from whether an individual employee chooses to pursue a claim as a class or collective action. Id.; see also *Beyoglu,* 362 NLRB No. 152, slip op. at 4-5 (2015) (Member Miscimarra, dissenting).

[4] *Murphy Oil*, above, slip op. at 30-34 (Member Miscimarra, dissenting in part). Sec. 9(a) states: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That *any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted*, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment" (emphasis added). The Act's legislative history shows that Congress intended to preserve every individual employee's right to "adjust" any employment-related dispute with his or her employer. See *Murphy Oil*, above, slip op. at 31-32 (Member Miscimarra, dissenting in part).

[5] When courts have jurisdiction over non-NLRA claims that are potentially subject to class treatment, the availability of class-type procedures does not rise to the level of a substantive right. See *D.R. Horton, Inc. v. NLRB*, 737 F.3d 344, 362 (5th Cir. 2013) ("The use of class action procedures . . . is not a substantive right.") (citations omitted), petition for rehearing en banc denied No. 12-60031 (5th Cir. 2014); *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326, 332 (1980) ("[T]he right of a litigant to employ Rule 23 is a procedural right only, ancillary to the litigation of substantive claims.").

[6] The Fifth Circuit has repeatedly denied enforcement of Board orders invalidating a mandatory arbitration agreement that waived class-type treatment of non-NLRA claims. See, e.g., *Murphy Oil USA, Inc. v. NLRB*, above; *D.R. Horton, Inc. v. NLRB,* above. The overwhelming majority of courts considering the Board's position have likewise rejected it. See *Murphy Oil,* 361 NLRB No. 72, slip op. at 34 (Member Miscimarra, dissenting in part); id., slip op. at 36 fn. 5 (Member Johnson, dissenting) (collecting cases); see also *Patterson v. Raymours Furniture Co.*, 96 F.Supp. 3d 71 (S.D.N.Y. 2015); *Nanavati v. Adecco USA, Inc.*, 99 F.Supp. 3d 1072 (N.D. Cal. 2015), motion to certify for interlocutory appeal denied 2015 WL 4035072 (N.D. Cal. June 30, 2015); *Brown v. Citicorp Credit Services.,* No. 1:12-CV-00062-BLW, 2015 WL 1401604 (D. Idaho Mar. 25, 2015) (granting reconsideration of prior determination that class waiver in arbitration agreement violated NLRA); but see *Totten v. Kellogg Brown & Root, LLC*, No. ED CV 14–1766 DMG (DTBx), 2016 WL 316019 (C.D. Cal. Jan. 22, 2016).

[7] For the reasons expressed in my *Murphy Oil* partial dissent and those thoroughly explained in former Member Johnson's dissent in *Murphy Oil*, the FAA requires that the arbitration agreement be enforced according to its terms. *Murphy Oil,* above, slip op. at 34 (Member Miscimarra, dissenting in part); id., slip op. at 49-58 (Member Johnson, dissenting).

[8] The class-action waiver agreements were voluntarily signed, even though the Respondents were willing to hire employees or continue their employment only if they entered into the agreements. For my colleagues, however, the voluntariness of such a waiver is immaterial. They indicate that the waiver was "unlawful even if entered into voluntarily." See *On Assignment Staffing Services, Inc.*, 362 NLRB No. 189 (2015) (finding class-action waiver agreement unlawful even where employees are free to opt out of the agreement); *Bristol Farms*, 363

Because I believe the Respondents' Agreement was lawful under the NLRA, I would find it was similarly lawful for the Respondents to file a motion in State court seeking to enforce the Agreement.[9] That the Respondents' motion was reasonably based is supported by court decisions that have enforced similar agreements.[10] As the Fifth Circuit recently observed after rejecting (for the second time) the Board's position regarding the legality of class-waiver agreements: "[I]t is a bit bold for [the Board] to hold that an employer who followed the reasoning of our *D. R. Horton* decision had no basis in fact or law or an 'illegal objective' in doing so. The Board might want to strike a more respectful balance between its views and those of circuit courts reviewing its orders."[11] I also believe that any Board finding of a violation based on the Respondents' meritorious State court motion to compel arbitration would improperly risk infringing on the Respondents' rights under the First Amendment's Petition Clause. See *Bill Johnson's Restaurants v. NLRB,* 461 U.S. 731 (1983); *BE & K Construction Co. v. NLRB,* 536 U.S. 516 (2002); see also my partial dissent in *Murphy Oil,* above, 361 NLRB No. 72, slip op. at 33–35. Finally, for similar reasons, I believe the Board cannot properly require the Respondents to reimburse the Charging Parties and any other plaintiffs for their attorneys' fees in the circumstances presented here. *Murphy Oil*, above, 361 NLRB No. 72, slip op. at 35.

2. *Alleged Interference with NLRB Charge Filing.* For the following reasons, however, I concur in my colleagues' finding that the Agreements unlawfully interfere with NLRB charge filing in violation of NLRA Section 8(a)(1).[12] In pertinent part, the Arbitration Agreement, which is contained in an employee handbook, requires employees to resolve by arbitration "any dispute, contro-

NLRB No. 45 (2015) (finding class-action waiver agreement unlawful even where employees must affirmatively opt *in* before they will be covered by a class-action waiver agreement, and where they are free to decline to do so). By definition, every agreement sets forth terms upon which each party may insist as a condition to entering into the relationship governed by the agreement. Thus, conditioning employment on the execution of a class-action waiver does not make it involuntary. However, the Board's position is even less defensible when the Board finds that NLRA "protection" operates in reverse—not to *protect* employees' rights to engage or refrain from engaging in certain kinds of collective action, but to *divest* employees of those rights by denying them the right *to choose* whether to be covered by an agreement to litigate non-NLRA claims on an individual basis. See *Bristol Farms*, above, slip op. at 2–4 (Member Miscimarra, dissenting).

Because I disagree with the Board's decisions in *Murphy Oil,* above, and *D. R. Horton*, above, and I believe the NLRA does not render unlawful arbitration agreements that provide for the waiver of class-type litigation of non-NLRA claims, I find it unnecessary to reach whether such agreements should independently be deemed lawful to the extent they "leave[] open a judicial forum for class and collective claims," *D. R. Horton*, 357 NLRB 2277, 2286, by permitting the filing of complaints with administrative agencies that, in turn, may file class- or collective-action lawsuits. See *Owen v. Bristol Care, Inc.,* 702 F.3d 1050 (8th Cir. 2013).

[9] As I explain below, I concur in my colleagues' finding that the Agreements unlawfully interfered with the right of employees to allege a violation of the NLRA through the filing of an unfair labor practice charge with the NLRB. However, the unlawfulness of the Agreements in this regard is not material to the merits of the Respondents' state court petition, in reliance on the Agreement for Binding Arbitration, to compel the Charging Parties to arbitrate their non-NLRA claims. See *Fuji Food Products,* 363 NLRB No. 118, slip op. at 4, 4–5 fn. 13 (2016) (Member Miscimarra, concurring in part and dissenting in part) (finding that employer lawfully enforced class-waiver agreement by filing motion to compel arbitration of non-NLRA claims, notwithstanding additional finding that agreement unlawfully interfered with Board charge filing).

[10] See, e.g., *Murphy Oil USA, Inc. v. NLRB*, above; *Johnmohammadi v. Bloomingdale's*, 755 F.3d 1072 (9th Cir. 2014); *D. R. Horton, Inc. v. NLRB*, above; *Owen v. Bristol Care, Inc.*, above; *Sutherland v. Ernst & Young LLP*, 726 F.3d 290 (2d Cir. 2013).

The Agreement for Binding Arbitration is silent as to whether arbitration may be conducted on a class or collective basis. For the reasons stated in former Member Johnson's dissent in *Countrywide Financial Corp.,* 362 NLRB No. 165, slip op. at 8–10 (2015), and my dissent in *Philmar Care, LLC*, 363 NLRB No. 57 (2015), slip op. at 4 fn. 11 (2015), finding that the Respondents' efforts to compel individual arbitration violated the Act is in conflict with the FAA and Supreme Court precedent construing that statute. The Court has held that a "party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so." *Stolt-Nielsen S.A. v. Animal Feeds International Corp.,* 559 U.S. 662, 684–685 (2010) (emphasis in original). Obviously, where an arbitration agreement is silent regarding class arbitration, there is no such contractual basis. Thus, Respondent's motion to compel individual arbitration "was well-founded in the FAA as authoritatively interpreted by the Supreme Court." *Philmar Care, LLC,* above (Member Miscimarra, dissenting).

[11] *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d at 1021.

[12] I agree with my colleagues that the judge did not abuse her discretion in refusing to admit into evidence a revised arbitration agreement that Respondents Adriana's Insurance Services, Inc. (Adriana) and Veronica's Auto Insurance Services, Inc. (Veronica) say they implemented in 2014 and 2015, respectively, after the complaint issued in this case. At the hearing, the Respondents stated that they offered this evidence "to show the current state of arbitration at the company, in terms of what is communicated to employees. We believe that it shows that the company has –-- has certain steps in place regarding arbitration. We basically are introducing it for a full and complete record, given what the subpoenas were that were issued." On brief, Respondents Adriana and Just Auto Insurance Services, Inc. assert that the evidence should have been admitted because "no employee could reasonably read the new language as waiving Section 7 rights." However, there is no contention and no finding that the "new language" is unlawful. My colleagues find that the excluded "new language" evidence was properly excluded on the ground that even if admitted, it would not have established that Adriana and Veronica repudiated the Agreements. I find it unnecessary to reach the issue of repudiation because I believe that the Respondents' proffer at the hearing and their argument on brief do not raise that issue. Also, because the Order requires only that Respondents Adriana and Veronica rescind or revise the offending Agreements, there is no merit to their claim that the Board's remedy necessarily requires them to rescind or revise the alleged revised agreement.

versy or claim arising out of or related to the employment relationship, including without limitation . . . all . . . statutory claims, . . . to the extent the law provides such claims may be arbitrated . . . ." And the Agreement for Binding Arbitration states in relevant part: "I knowingly and voluntarily agree to submit and settle any dispute, controversy or claim arising out of or relating to my employment relationship . . . to arbitration as described in the 'Arbitration Agreement' section of the handbook." For the reasons stated in my separate opinion in *Rose Group d/b/a Applebee's Restaurant,* 363 NLRB No. 75, slip op. at 3–5 (2015) (Member Miscimarra, concurring in part and dissenting in part), I believe that an agreement may lawfully provide for the arbitration of NLRA claims, and such an agreement does not unlawfully interfere with Board charge filing, at least where the agreement expressly preserves the right to file claims or charges with the Board or, more generally, with administrative agencies.

Here, however, the Arbitration Agreement does not qualify in any way the requirement that all "statutory claims," and therefore all claims for violation of any federal statute, including the NLRA, must be resolved in binding arbitration and in this manner only. There is no exception preserving employees' right to file charges with administrative agencies such as the NLRB. As noted above, the Arbitration Agreement requires arbitration of covered claims only "to the extent the law provides such claims may be arbitrated." Contrary to the Respondents, however, this provision is insufficient to indicate to employees that the right to file NLRB charges is preserved. See, e.g., *Keiser University,* 363 NLRB No. 73, slip op. at 5, 6–7 (2015) (arbitration agreement unlawfully restricted NLRB charge filing where it broadly required arbitration of employment-related disputes "except where specifically prohibited by law"; wording of exception found ineffective to communicate exception for filing charges with the Board). For these reasons, I join my colleagues in finding that the Agreements violate the Act by unlawfully restricting the filing of charges with the Board. See *U-Haul Co. of California,* 347 NLRB 375, 377(2006), enfd. mem. 255 Fed. Appx. 527 (D.C. Cir. 2007); *Murphy Oil*, above, slip op. at 22 fn. 4 (Member Miscimarra, dissenting in part); *GameStop Corp.*, 363 NLRB No. 89, slip op. at 6–7 (Member Miscimarra, concurring in part and dissenting in part); *Rose Group d/b/a Applebee's Restaurant*, above (Member Miscimarra, concurring in part and dissenting in part).

Accordingly, I respectfully dissent in part from, and concur in part with, my colleagues' decision.

Dated, Washington, D.C. May 31, 2016

Philip A. Miscimarra, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain an Arbitration Agreement and Agreement for Binding Arbitration that our employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board.

WE WILL NOT enforce an arbitration agreement in a manner that requires our employees to waive their right to maintain class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind our unlawful Arbitration Agreement and Agreement for Binding Arbitration in all of their forms, or revise them in all of their forms to make clear that each Agreement does not restrict your right to file charges with the National Labor Relations Board.

WE WILL notify all current and former employees who signed the Agreement for Binding Arbitration or to whom the Agreement for Binding Arbitration or the Arbitration Agreement was presented that they have been rescinded or revised and, if revised, provide them a copy of the revised Agreements.

WE WILL notify the court in which Aldo Alpizar and Liset Viamontes filed their collective lawsuit and the court hearing our appeal that we have rescinded or revised the Agreement for Binding Arbitration and the Arbitration Agreement upon which we based our motion to

compel individual arbitration, and WE WILL inform these courts that we no longer oppose Aldo Alpizar and Liset Viamontes' collective lawsuit on the basis of the Agreements.

WE WILL reimburse Aldo Alpizar and Liset Viamontes and any other plaintiffs for any reasonable attorneys' fees and litigation expenses that they may have incurred in opposing our motion to dismiss their collective lawsuit and compel individual arbitration.

ADRIANA'S INSURANCE SERVICES, INC.

The Board's decision can be found at www.nlrb.gov/case/31–CA–113416 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

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WE WILL NOT maintain an Arbitration Agreement and Agreement for Binding Arbitration that our employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind our unlawful Arbitration Agreement and Agreement for Binding Arbitration in all of their forms, or revise them in all of their forms to make clear that each Agreement does not restrict your right to file charges with the National Labor Relations Board.

WE WILL notify all current and former employees who signed the Agreement for Binding Arbitration or to whom the Agreement for Binding Arbitration or the Arbitration Agreement was presented that they have been rescinded or revised and, if revised, provide them a copy of the revised Agreements.

ADRIANA'S INSURANCE SERVICES, INC.

The Board's decision can be found at www.nlrb.gov/case/31–CA–113416 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

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Choose not to engage in any of these protected activities.

WE WILL NOT maintain an Arbitration Agreement and Agreement for Binding Arbitration that our employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board.

WE WILL NOT enforce an arbitration agreement in a manner that requires our employees to waive their right to maintain class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind our unlawful Arbitration Agreement and Agreement for Binding Arbitration in all of their forms, or revise them in all of their forms to make clear that each Agreement does not restrict your right to file charges with the National Labor Relations Board.

WE WILL notify all current and former employees who signed the Agreement for Binding Arbitration or to whom the Agreement for Binding Arbitration or the Arbitration Agreement was presented that they have been rescinded or revised and, if revised, provide them a copy of the revised Agreements.

WE WILL notify the court in which Aldo Alpizar and Liset Viamontes filed their collective lawsuit and the court hearing our appeal that we have rescinded or revised the Agreement for Binding Arbitration and the Arbitration Agreement upon which we based our motion to compel individual arbitration, and WE WILL inform these courts that we no longer oppose Aldo Alpizar and Liset Viamontes' collective lawsuit on the basis of the Agreements.

WE WILL reimburse Aldo Alpizar and Liset Viamontes and any other plaintiffs for any reasonable attorneys' fees and litigation expenses that they may have incurred in opposing our motion to dismiss their collective lawsuit and compel individual arbitration.

VERONICA'S AUTO INSURANCE SERVICES, INC.

The Board's decision can be found at www.nlrb.gov/case/31–CA–113416 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX D

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

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Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain an Arbitration Agreement and Agreement for Binding Arbitration that our employees reasonably would believe bars or restricts their right to file charges with the National Labor Relations Board.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind our unlawful Arbitration Agreement and Agreement for Binding Arbitration in all of their forms, or revise them in all of their forms to make clear that each Agreement does not restrict your right to file charges with the National Labor Relations Board.

WE WILL notify all current and former employees who signed the Agreement for Binding Arbitration or to whom the Agreement for Binding Arbitration or the Arbitration Agreement was presented that they have been rescinded or revised and, if revised, provide them a copy of the revised Agreements.

VERONICA'S AUTO INSURANCE SERVICES, INC.

The Board's decision can be found at www.nlrb.gov/case/31–CA–113416 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

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APPENDIX E

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

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WE WILL NOT enforce an arbitration agreement in a manner that requires our employees to waive their right to maintain class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL notify the court in which Aldo Alpizar and Liset Viamontes filed their collective lawsuit and the court hearing our appeal that we no longer oppose the lawsuit of Aldo Alpizar and Liset Viamontes on the basis of the Agreement for Binding Arbitration and the Arbitration Agreement upon which we based our motion to compel arbitration of the their claims.

WE WILL Reimburse Aldo Alpizar and Liset Viamontes and any other plaintiffs for any reasonable attorneys' fees and litigation expenses that they may have incurred in opposing our motion to dismiss their collective lawsuit and compel individual arbitration.

JUST AUTO INSURANCE SERVICES, INC.

The Board's decision can be found at www.nlrb.gov/case/31–CA–113416 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Yaneth Palencia, Esq., for the General Counsel.
H. Spencer Hamer, III, Esq., for the Respondents.
Janette C. Lee, Esq., for the Charging Parties.

DECISION

MARY MILLER CRACRAFT, Administrative Law Judge. Adriana's Insurance Services, Inc. (Adriana's),[1] Just Auto Insurance Services, Inc. (Just),[2] and Veronica's Auto Insurance Services, Inc. (Veronica's),[3] jointly referred to here as Respondents, maintain or maintained arbitration agreements which require their employees to submit employment-related claims, including claims arising under Federal statutes, to arbitration. The General Counsel alleges that employees would reasonably construe the language used in these agreements to preclude them from filing unfair labor practice charges with the National Labor Relations Board (the Board or NLRB) in violation Section 8(a)(1) of the National Labor Relations Act (the Act).[4] Additionally, when in October 2013 employees Alpizar and Viamontes filed a State court class action wage and hour lawsuit against Respondents, Respondents moved to compel individual arbitration. The General Counsel alleges that Respondents' attempt to compel individual arbitration in the State court class action also violates Section 8(a)(1) of the Act.[5] I find both violations as alleged.

On the entire record,[6] and after considering the briefs filed

[1] The unfair labor practice charge, first amended charge, and second amended charge in Case 31–CA–113416 were filed by Charging Party Aldo Alpizar (Alpizar) against Adriana's on respectively September 13, November 6 and 27, 2013. The unfair labor practice charge, first amended charge, and second amended charge in Case 31–CA–113423 were filed by Charging Party Liset Viamontes (Viamontes) against Adriana's on respectively September 13, November 6 and 27, 2013.

[2] Alpizar filed the unfair labor practice charge and first amended charge against Just in Case 31–CA–113417 on September 13 and November 6, 2013, respectively. Viamontes filed the unfair labor practice charge and first amended charge against Just in Case 31–CA–113428 on September 13 and November 6 respectively.

[3] Alpizar filed the unfair labor practice charge, first amended charge, and second amended charge against Veronica's in Case 31-CA-113420 on September 13, November 6 and 27, 2013, respectively. Viamontes filed the unfair labor practice charge, first amended charge, and second amended charge against Veronica's in Case 31–CA–113425 on September 13, November 6 and 27, 2013.

[4] 29 U.S.C. §158(a)(1).

[5] The consolidated complaint issued on February 27, 2014, and was amended at hearing. Hearing was held in Los Angeles, California on February 10, 2015.

[6] The facts were, for the most part, submitted by stipulation. No credibility resolutions are required on this record.

by counsel for the General Counsel and counsel for the Respondents, the following findings of fact and conclusions of law are made.

JURISDICTION

Respondents are not alleged to be joint employers. Each of the Respondents admits that it is a corporation with an office and place of business in California and that it meets the Board's retail jurisdictional standard[7] and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Thus this dispute affects interstate commerce and the Board has jurisdiction of this case pursuant to Section 10(a) of the Act.

ARBITRATION AGREEMENTS

Facts

Since at least the fall of 2011, Adriana's and Veronica's have utilized an identical Arbitration Agreement in their respective employee handbooks. The provision is as follows:

> Accordingly, if work-related complaints and concerns are unable to be informally resolved, then any dispute, controversy or claim arising out of or related to the employment relationship, including without limitation, contract claims, tort claims, breach of duty claims, wrongful termination claims, wage claims, claims of discrimination, harassment and all other common law and statutory claims, including all claims based upon federal or state civil rights laws, including claims under the EEOC, FEHA or otherwise, to the extent the law provides such claims may be arbitrated, shall at the request of either the employee or [Adriana's or Veronica's] be submitted to and settled by binding arbitration. Such arbitration shall be conducted in Los Angeles County, California. Such arbitration shall include any claims you have against [Adriana's or Veronica's] officers, managers, supervisors, agents, directors or owners.

On September 26, 2011, Veronica's required its employee Viamontes to sign an Agreement for Binding Arbitration and on October 4, 2011, Adriana's required its employee Alpizar to sign an identical Agreement for Binding Arbitration as follows:

> I KNOWINGLY AND VOLUNTARILY AGREE TO SUBMIT AND SETTLE ANY DISPUTE, CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO MY EMPLOYMENT RELATIONSHSIP WITH ADRIANA'S TO ARBITRATION AS DESCRIBED IN THE "ARBITRATION AGREEMENT" SECTION OF THE HANDBOOK. I AGREE THAT THE ARBITRATION OF SUCH ISSUES, INCLUDING THE DETERMINATION OF ANY AMOUNT OF DAMAGES SUFFERED, SHALL BE FINAL AND BINDING UPON ME AND ADRIANA'S TO THE MAXIMUM EXTENT PERMITTED BY LAW. I REALIZE BY AGREEING TO ARBITRATION, I WILL HAVE WAIVED MY RIGHT TO TRIAL BY JURY. THIS POLICY CANNOT CHANGE EXCEPT BY WRITTEN AGREEMENT BETWEEN ADRIANA'S AND ME.

Analysis

Section 7 protects the right of employees to file charges with the Board or otherwise access the Board's processes. *Bill's Electric,* 350 NLRB 292, 296 (2007); *U-Haul Co. of California,* 347 NLRB 375, 377 (2006), enfd. 255 Fed. Appx. 527 (D.C. Cir 2007) (unpublished decision). Although the Arbitration Agreement does not specifically state that employees may not file charges with the NLRB, a rule which does not explicitly restrict Section 7 rights may nevertheless violate the Act if employees would reasonably construe the language to prohibit Section 7 activity. *Lutheran Heritage Village –Livonia,* 343 NLRB 646, 647 (2004).

The language in Veronica's and Adriana's Arbitration Agreements would reasonably be construed by employees to prohibit or restrict employees' Section 7 right to file an unfair labor practice charge. Read in context, the language broadly mandates arbitration for "any dispute, controversy or claim arising out of or related to the employment relationship." This all-inclusive language is reasonably construed to cover unfair labor practice claims arising from the employment relation. *Cellular Sales of Missouri, LLC,* 362 NLRB No. 27, slip op. at 1, fn. 4 (2015) (work rule reasonably construed to interfere with ability to file charges with Board even if rule did not expressly prohibit access to Board).

The qualifying term, "to the extent such claims may be arbitrated," does not save the rule because the Board does not assume that employees have specialized legal knowledge which could be employed in understanding such a clause to exclude NLRB claims. For instance, the Board found language limiting a compulsory arbitration rule to claims "that may be lawfully resolve[d] by arbitration" would not be reasonably understood by employees to exclude unfair labor practice charges from the scope of the agreement. *2 Sisters Food Group,* 357 NLRB 1816–1817, 1837 (2011); see also *U-Haul,* supra, 347 NLRB at 377–378.

Veronica's and Adriana's argue that they have fully remedied any ambiguity in the Arbitration Agreement and Agreement for Binding Arbitration by implementing new rules. Their question and answer offers to prove the facts underlying this assertion were rejected at hearing. Moreover, even were these facts in evidence, they fall short of a defense to the allegations. In order to fully remedy an unlawful rule, an employer must publish a timely, specific, unambiguous, untainted notice to employees announcing repudiation of the old rule and assuring employees that in the future it will not interfere with Section 7 rights. See *New Passages Behavioral Health,* 362 NLRB No. 55, slip op. at 1-2 (2015), citing *Casino San Pablo,* 361 NLRB No. 148, slip op. at 4 (2014), and *Passavant Memorial Area Hospital,* 236 NLRB 138, 138–139 (1978). Here one Respondent appears to have replaced one rule with another rule. This effort is insufficient to remedy the unlawful rule.

Thus I find that by maintenance of an Arbitration Agreement which employees would reasonably construe as limiting their right to access to the NLRB, Adriana's and Veronica's interfered with employee Section 7 rights in violation of Section

[7] The Board asserts jurisdiction over all retail enterprises which fall within its statutory jurisdiction and have a gross annual volume of business of at least $500,000. *Carolina Supplies & Cement Co.,* 122 NLRB 88 (1958).

8(a)(1) of the Act. Because the "Agreement for Binding Arbitration," which employees are required to sign by Adriana's and Veronica's, utilizes the same all-inclusive language and incorporates the "Arbitration Agreement" by reference, the Agreement for Binding Arbitration is similarly flawed and interferes with employee Section 7 rights in violation of Section 8(a)(1) of the Act.

STATE COURT WAGE AND HOUR CLASS ACTION LITIGATION

Facts

On March 7, 2013, Viamontes and Alpizar filed a class action complaint in the Superior Court of the State of California, County of Los Angeles, Central Civil West, Case No. BC502472, alleging that Adriana's, Veronica's, and Just had committed various wage and hour violations of the California Labor Code. Although neither the Arbitration Agreement nor the Agreement for Binding Arbitration specifically precludes collective or class action, on October 21, 2013, the three Respondents filed a motion to compel individual arbitration relying on the Agreements for Binding Arbitration signed by Viamontes and Alpizar.

Following oral argument, on December 6, 2013, Judge Elihu M. Berle of the Superior Court signed an order denying the motion to compel individual arbitration. The order issued on December 10, 2013, and on December 23, 2013, Respondents filed a notice of appeal of Judge Berle's order. Briefs followed in the California Court of Appeal, Second Appellate District, Division Three. No ruling had issued at the time of hearing.

Analysis

As the opening sentence of *Murphy Oil USA,* 361 NLRB No. 72, slip op. at 1 (2014) states, "For about 80 years, Federal labor law protected the right of employees to pursue their work-related legal claims *together,* i.e., with one another, for the purpose of improving their working conditions." Starting from this vantage point, the Board reaffirmed its holding in *D. R. Horton,* 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), that an employer violates the Act when it requires an employee, as a condition of employment, to sign an agreement that precludes employees from filing class action suits addressing their wages, hours, and working conditions. *Murphy Oil USA,* supra, 361 NLRB No. 72, slip op. at 2.

The issue here, however, is not whether the Respondents' Agreements for Binding Arbitration constitute agreements that preclude employees from filing class action suits regarding employment claims. In fact, the Agreements for Binding Arbitration are silent on that issue. Rather, the issue here is whether Respondents' filing a motion to compel individual arbitration and Respondents' appeal from denial of that motion, constitute a restriction on employees' Section 7 rights.

Section 8(a)(1) provides, inter alia, that it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of their Section 7 right to engage in concerted activities for their mutual aid and protection. Concerted activities include employee efforts to improve working conditions outside the immediate employer-employee relationship by joining together in concerted legal action regarding wages, hours, and working conditions.[8] Because employees have a Section 7 right to jointly pursue legal redress in Federal or State court, Respondents' efforts to preclude this Section 7 activity have an illegal objective and are unlawful. Thus, I find that by filing the motion to compel individual arbitration and by appealing denial of that motion, i.e., by seeking to stop the concerted activity of Viamontes and Alpizar, Respondents violated Section 8(a)(1) of the Act.

Respondents argue that their motion to compel individual arbitration and their appeal from denial of that motion are specifically permitted by the Federal Arbitration Act (FAA) as recently interpreted in *American Express Co. v. Italian Colors Restaurant*, ___ U.S. ___, 133 S.Ct. 2304 (2013), and *AT&T Mobility LLC v. Concepcion,* ___ U.S. ___, 131 S.Ct. 1740 (2011). In *Murphy Oil,* supra, 361 NLRB No. 62, slip op. at 10–15, the Board rejected this argument. The Board found instead that its view—that "requiring employees to waive their right to collectively pursue employment-related claims in all forums, arbitral and judicial" violated Section 8(a)(1)—did not "conflict with the letter or interfere with the policies underlying the [FAA]." An administrative law judge must follow Board precedent that has not been reversed by the Supreme Court itself.[9]

Murphy Oil is consistent with the Court's holdings. *American Express* did not involve the core substantive Section 7 right of employees to act together to file a class action lawsuit. The Board's interpretation of the Section 7 right of employees to act together to file lawsuits against for employment related claims as a core substantive right is entitled to judicial deference.[10] Moreover, *American Express* did not involve an employer who required employees to waive their substantive Section 7 rights. Because *Murphy Oil* is not reversed by Supreme Court precedent, Respondents' argument is rejected.

CONCLUSIONS OF LAW

Respondents Adriana's and Veronica's violated Section 8(a)(1) of the Act by maintaining their identical Arbitration Agreements and Agreements for Binding Arbitration" which employees would reasonably construe to preclude filing of charges with the Board. Respondents Adriana's, Just, and Veronica's violated Section 8(a)(1) of the Act by filing a motion to compel individual arbitration and an appeal from denial of the motion to compel individual arbitration in a State court wage and hour class action.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I shall order that they cease and desist and take certain affirmative action designed to effectuate the

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[8] See, e.g., *Brady v. National Football League,* 644 F.3d 661, 673 (8th Cir. 2011); *Mohave Elec. Co-op, Inc. v. NLRB,* 206 F.3d 1183, 1188 (D.C. Cir. 2000); see generally *Eastex, Inc. v. NLRB,* 437 U.S. 556, 565–566 (1978).

[9] See *Pathmark Stores,* 342 NLRB 378, fn. 1 (2004); *Iowa Beef Packers,* 144 NLRB 615, 616 (1968), enfd. in part, 331 F.2d 176 (8th Cir. 1964).

[10] *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S.837 (1984).

policies of the Act.

Specifically, having concluded that the Arbitration Agreement is unlawful, to the extent Respondents Adriana's and Veronica's have not already done so,[11] they must revise or rescind the Arbitration Agreement and advise their employees in writing that the Arbitration Agreement has been revised or rescinded. Further, Respondents Adriana's and Veronica's shall post notices at all locations where the Arbitration Agreement, or any portion of it which is reasonably construed to preclude employees from filing unfair labor practice charges with the Board was or is in effect. The Agreement for Binding Arbitration must be revised or rescinded to reflect that it references a revised arbitration agreement.

Respondents must also reimburse Charging Parties Viamontes and Alpizar for any litigation and related expenses, with interest, to date and in the future, directly related to the Respondents' motion to compel individual arbitration and Respondents' notice of appeal from denial of that motion in the Superior Court of California, County of Los Angeles, Central Civil West, Case BC502472. Interest shall be computed in accordance with *New Horizons,* 283 NLRB 1173 (1987).

Finally, the Respondents must withdraw their motion to compel individual arbitration and their appeal of denial of their motion to compel individual arbitration. *Bill Johnson's Restaurants v. NLRB,* 461 U.S. 731, 737 fn. 5 (1983) (legal proceedings which have an objective that is illegal may be enjoined without infringing the First Amendment).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondents Adriana's Insurance Services, Inc., Rancho Cucamonga, California; and Veronica's Auto Insurance Services, Inc., San Bernardino, California, their officers, agents, successors, and assigns, shall cease and desist from maintaining a handbook arbitration agreement rule which is reasonably construed to prohibit access to the NLRB and an agreement for binding arbitration which incorporates that handbook rule. The Respondents Adriana's Insurance Services, Inc., Rancho Cucamonga, California; Just Auto Insurance Services, Inc., Ontario, California; and Veronica's Auto Insurance Services, Inc., San Bernardino, California shall cease and desist from seeking to enforce the Agreement for Binding Arbitration by filing a motion to compel individual arbitration in Case BC502472 in the Superior Court of California, County of Los Angeles, Central Civil West or appealing denial of that motion in the California Court of Appeal, Second Appellate District, Division Three, or in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed by Section 7 of the Act.

1. Respondents Adriana's and Veronica's shall also take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind or revise all elements of their respective handbook arbitration agreement rules to make it clear to employees that the rule does not constitute a restriction of the right to file unfair labor practice charges with the NLRB or otherwise access the Board's processes.

(b) Notify employees of the rescinded or revised handbook arbitration agreement rule providing them with a copy of the revised rule or notifying of the rescission of the rule.

(c) Within 14 days after service by the Region, post at all facilities where they maintained the handbook arbitration agreement rule, or any portion of it which is reasonably understood to restrict employee access to the NLRB to file unfair labor practice charges or otherwise access the Board's processes, the attached notice marked "Appendix A (Adriana's) or "Appendix B" (Veronica's)."[13]

2. Respondents Adriana's, Veronica's, and Just shall also take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reimburse the Charging Parties for any litigation expense directly related to opposing the Respondents' motion to compel individual arbitration and/or Respondents' appeal of denial of that motion.

(b) Within 7 days after the Board Order, file a motion with the California Court of Appeal, Second Appellate District, Division Three in Case No. BC502472 withdrawing their appeal from denial of the motion to compel individual arbitration and file a motion with the Superior Court of the State of California, County of Los Angeles, Central Civil West in Case No. BC502472, withdrawing their motion to compel individual arbitration.

(c) Within 14 days after service by the Region, post the attached notice marked "Appendix A" (Adriana's), "Appendix B" (Veronica's) and "Appendix C" (Just) at all facilities impacted by its filing of the motion to compel arbitration and appeal from denial of the motion to compel arbitration. Copies of the notices, on forms provided by the Regional Director for Region 31, after being signed by the Respondents' authorized representatives, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical positing of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if

[11] At hearing, Adriana's and Veronica's offered to prove that they had implemented or were planning to implement a new Arbitration Agreement. The General Counsel would not stipulate to this evidence and objected to receipt of this evidence at hearing on the basis of relevance. Technically, such evidence might be relevant to the remedy only. Although this evidence was rejected, to the extent the Region is satisfied that new handbook Arbitration Agreements were actually implemented and assuming no new charges involving them, the remedy should be revised accordingly. See, e.g., *Lily Transportation Corp.,* 362 NLRB No. 54, slip op. at 2 (2015).

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the finding, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived.

[13] If This Order is enforced by a judgment of a United States court of appeal, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondents customarily communicate with their employees by such means. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondents since March 13, 2013[11] (Adriana's and Veronica's), or October 21, 2013 (Just).

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

Dated, Washington, D.C. April 7, 2015

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal Labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain our handbook "Arbitration Agreement" or our "Agreement for Binding Arbitration" which incorporates the handbook "Arbitration Agreement" because employees would reasonably construe these documents as prohibiting filing charges with the NLRB.

WE WILL NOT seek to enforce our handbook "Arbitration Agreement" or our "Agreement for Binding Arbitration" by claiming they prohibit collective or class action lawsuits in a State court wage and hour litigation brought by Charging Parties Aldo Alpizar and Liset Viamontes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal law.

WE WILL rescind or revise the "Arbitration Agreement" to make it clear to employees that the agreement does not prohibit the filing of charges with the NLRB.

WE WILL notify you of the rescinded or revised "Arbitration Agreement" and provide you with a copy of any revised agreement.

WE WILL reimburse Charging Parties Aldo Alpizar and Liset Viamontes for any litigation expenses directly related to our motion to compel individual arbitration and expenses directly related to our notice of appeal from denial of our motion to compel individual arbitration.

ADRIANA'S INSURANCE SERVICES, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/31–CA–113416 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal Labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain our handbook "Arbitration Agreement" or our "Agreement for Binding Arbitration" which incorporates the handbook "Arbitration Agreement" because employees would reasonably construe these documents as prohibiting filing charges with the NLRB.

[11] In *Excel Container, Inc.,* 325 NLRB 17 (1997), the Board held that the operative date for determining which employees receive a contingent notice-mailing is the date of the first violation of the Act. The Board reasoned that using this date would ensure that all employees exposed to the unfair labor practice and its effects were notified of the outcome of the NLRB litigation. Here, Viamontes was required to sign Veronica's Agreement for Binding Arbitration on September 26, 2011. Alpizar was required to sign Adriana's Agreement for Binding Arbitration on October 4, 2011. The complaint allegations are that the Arbitration Agreements were maintained since those dates in violation of the Act. However, because the remedy may not exceed the six-month 10(b) limitations period, for Respondent's Veronica's and Adriana's I have utilized the date of March 13, 2013, i.e., six months prior to filing of the relevant charges on September 13, 2013.

WE WILL NOT seek to enforce our handbook "Arbitration Agreement" or our "Agreement for Binding Arbitration" by claiming they prohibit collective or class action lawsuits in a State court wage and hour litigation brought by Charging Parties Aldo Alpizar and Liset Viamontes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal law.

WE WILL rescind or revise the "Arbitration Agreement" to make it clear to employees that the agreement does not prohibit the filing of charges with the NLRB.

WE WILL notify you of the rescinded or revised "Arbitration Agreement" and provide you with a copy of any revised agreement.

WE WILL reimburse Charging Parties Aldo Alpizar and Liset Viamontes for any litigation expenses directly related to our motion to compel individual arbitration and expenses directly related to our notice of appeal from denial of our motion to compel individual arbitration.

VERONICA'S AUTO INSURANCE SERVICES, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/31–CA–13416 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

APPENDIX C

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal Labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT seek to enforce our handbook "Arbitration Agreement" or our "Agreement for Binding Arbitration" by claiming they prohibit collective or class action lawsuits in a State court wage and hour litigation brought by Charging Parties Aldo Alpizar and Liset Viamontes.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Federal law.

WE WILL reimburse Charging Parties Aldo Alpizar and Liset Viamontes for any litigation expenses directly related to our motions to compel individual arbitration and expenses directly related to our appeal from denial of their motion to compel individual arbitration.

JUST AUTO INSURANCE SERVICES, INC.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/31–CA–113416 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.